'C.R.'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.Rev.Pet.No. 1433 of 2007()

ST.143/2006 of JUDL. MAGISTRATE OF FIRST CLASS-II, HARIPAD

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REVN. PETITIONER: COMPLAINANT

MEENAKSHI, D/O KUTTY,
CHANGAYIL SITHARAYIL, THEKKEMANKUZHIYIL,
BAHARANICKAVU VILLAGE.

BY ADV. SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)

RESPONDENTS: ACCUSED

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1. UDAYAKUMAR, S/O VISWAMBARAN,
INDIVARAM VEETTIL, FROM VISWABHAVANAM,
NOORANADU VILLAGE.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J. **'C.R.'**

Crl. R.P. No. 1433 OF 2007 D

Dated this the 27th day of September, 2007

O R D E R

The revision petitioner, who is the complainant in S.T.No.143/06 on the file of JFCM-II, Haripad, challenges the order dated 5.2.07 passed by the said Magistrate returning the complaint presumably under section 201 Cr.P.C. for presenting a same before the proper court having jurisdiction within two weeks.

2. The above private complaint was filed against the first respondent accused alleging the commission of an offence punishable under section 138 of the Negotiable Instruments Act in respect of a cheque bearing No.509004 drawn on the Pallickal Branch of the State Bank of India for a sum of Rs.1,00,000/- allegedly issued by the accused to discharge his liability towards a loan said to have been availed by him from the revision petitioner/complainant.

3. The learned Magistrate took cognizance of the offence and recorded the sworn statement of the complainant and took the case on file as S.T.No.143/2006. On receipt of summons, the accused entered appearance. The trial of the case was later on

commenced. After the evidence in the case was over, the accused was examined under section 313 Cr.P.C. and the case was posted for arguments when the first respondent accused, for the first time, raised a contention that the said Magistrate lacks territorial jurisdiction to entertain and try the complaint since the place where the revision petitioner complainant is residing and the place where the cheque was presented and the place where the accused is residing are not within the local limits of the JFCM-II, Haripad. The objection regarding jurisdiction was raised on the basis that merely because the place of issuance of notice to the accused was within the local limits of the Haripad court would not clothe that court to entertain and try the case. Admittedly, the statutory notice was issued from a place within the local limits of the jurisdiction the JFCM-II, Haripad.

4. The learned Magistrate relying on the decision reported in ***Ahammedkutty Haji Vs. State of Kerala*** [2007 (1) KLT 638] and ***Hariharaputhra Sharma Vs. State of Kerala*** [2006 (3) KLJ 875] took the view that the decision of the Apex court in ***K.Bhaskaran Vs. Sakaran Vaidhyan Balan and another*** [1999 (7) SCC 510] had been distinguished in the later decisions of this

court and accordingly came to the conclusion that since both the accused as well as the complainant are residing outside the jurisdiction of the court below and the cheque was presented as well as dishonoured at places outside the local limits of the court below and the drawee bank was also located beyond the limits of the court below, that court had no territorial jurisdiction to entertain the complaint merely because the lawyer who issued the statutory notice had his office at Haripad within the local limits of the court below. Accordingly, the complaint was returned with a direction to present it before the proper court having jurisdiction. It is the said order which is assailed by the revision petitioner.

5. Eventhough the first respondent accused was duly served, he has not chosen to enter appearance or oppose this revision.

6. First of all, going by the decision of the Apex court in ***Bhaskaran's case,*** if the giving of notice in writing to the drawer of the cheque demanding payment took place within the local limits of the jurisdiction of the court when the complaint was filed, then that court can entertain and try the complaint. Even assuming that the court below did not possess the territorial

jurisdiction to entertain the complaint for the reasons stated by that court, it is pertinent to note that the objection regarding territorial jurisdiction was raised only at the fag end of the trial and that too for the first time when the arguments were heard. Eventhough there is no provision in Cr.P.C. analogous to one contained in section 21 of the Code of Civil Procedure, the preponderance of judicial opinion is to the effect that if an objection regarding territorial jurisdiction has not been raised at the earliest opportunity, then it will not be entertained by the court. The position is almost analogous to what is obtained under section 21 C.P.C. In ***Ramanujan Nair Vs. Sarojini*** [1970 KLT 645] the question arose before the trial court as to whether it had territorial jurisdiction under section 177 Cr.P.C. to entertain the complaint. The objection regarding jurisdiction was raised only at the fag end of the trial. The accused did not raise the objection regarding want of territorial jurisdiction until the entire prosecution evidence was over. This is what the Division Bench observed in that decision:-

> "4. S.177 of the Code of Criminal Procedure provides that every offence shall ordinarily be inquired into and tried by a court

within the local limits of whose jurisdiction the offence was committed. The contention now is that the second marriage, the offence in the present case, was committed within the local limits of the Quilon court and since the complaint was filed in the Trivandrum court, the latter court has no territorial jurisdiction to try the offence. The Supreme Court has said in Narumal's case that the word 'ordinarily' in S.177 of the Code of Criminal Procedure means “except where provided otherwise in the Code”. From this it is contended by the counsel of the petitioner that since there is no other provision contra in the Code or even in any other law the proper court having jurisdiction to try the case is the court which should ordinarily try the case, namely, the court at Quilon. In the other decision of the Supreme Court the salutary principle behind S.177 is pointed out. The Supreme Court has pointed out that the jurisdiction of courts for trial of offences is of two kinds, one regarding the power of the courts to try particular kinds of offences and the other what is called territorial jurisdiction. The Supreme Court has also pointed out that the former type of jurisdiction goes to the root of the matter, and if a court not empowered to try a particular offence does try it, the entire trial is void, and that such importance is not attached to lack of territorial jurisdiction. The Supreme Court has pointed out further that

territorial jurisdiction is “a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the court”. Thus the Supreme Court has pointed out, S.177 lays down a rule which does not go to the root of the matter and which does not make the trial by a court having no territorial jurisdiction a nullity. It is not as if the Additional First Class Magistrate's Court at Trivandrum is lacking in jurisdiction to try a case under S.494 of the Penal Code: the lack of jurisdiction is only because the alleged second marriage is said to have taken place outside its territorial jurisdiction. In other words, the Trivandrum court has no lack of inherent jurisdiction to try an offence of the kind, but its lack of jurisdiction is only lack of territorial jurisdiction.

5. In the special circumstances we have already pointed out at the commencement of this judgment, namely, that the petitioner did not take the objection of lack of territorial jurisdiction until the entire prosecution evidence was over and even until four of the five accused persons were discharged, we feel that this case may be taken out of the expression “ordinarily” in S.177 of the Code of Criminal Procedure. The

> petitioner has not even alleged that he is prejudiced by the trial being continued before the court at Trivandrum: in fact, the circumstances pointed out at the bar indicate that the trial of the case in the Trivandrum court might probably be more convenient to the petitioner."

7. The court below was not justified in entertaining the objection regarding territorial jurisdiction at the belated stage as aforesaid especially when no prejudice was pleaded or proved. The impugned order dated 5.2.07 is accordingly set aside and JFCM-II, Haripad is directed to proceed with S.T.No.143/06 and dispose it of in accordance with law.

This revision is allowed as above.

(V. RAMKUMAR, JUDGE)

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